

# LONG TERM CARE COMMUNITY COALITION

*Advancing Quality, Dignity & Justice*

December 9, 2019

The Honorable Thomas R. Suozzi  
214 Cannon House Office Building  
United States House of Representatives  
Washington, DC 20515

Dear Representative Suozzi:

Thank you very much for your follow-up questions to my testimony at the House Ways and Means Committee's November 14 hearing on "Caring for Aging Americans." Please see below for my responses. As always, please do not hesitate to reach out to me or my organization for additional information, now or any time in the future.

## **Ensuring Appropriate Staffing Levels**

Insufficient staffing is a longstanding problem that has resulted in harm and heartbreak for countless residents and families. It does not have to be this way. Some nursing homes provide sufficient staffing but, in the absence of meaningful standards and enforcement, too many do not.

While staffing needs vary by resident, research has shown that there are baseline levels below which residents have a greater likelihood of harm. That baseline, identified by a landmark federal study in 2001, is 4.1 hours of direct care staff time per resident, per day, with .75 hours of that time provided by a registered nurse (RN). [Abt Associates (Prepared for the Centers for Medicare and Medicaid Services), *Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes*, Report To Congress: Phase II Final (December 2001).]

Given that resident acuity levels have risen over the years and our ability to measure staffing needs has improved, a new staff time study for licensed nurses in nursing homes is needed to better address the amount of time needed to carry out basic nursing care in accordance with federal laws and regulations. I would like to take this opportunity to strongly recommend that Congress direct and fund such a study through the Centers for Medicare and Medicaid Services (CMS).

## **Ensuring Staffing is Not Sacrificed to Maximize Profits**

There are several guardrails that the federal government could utilize to curtail facilities from reducing staffing to maximize profits, including the following:

1. Institute a medical loss ratio for nursing homes to put sensible limits on the amount of public funds that nursing homes pull out for profits, administrative, and other, non-care, expenses before they allocate funds to resident care;

2. Codify a numerical minimum staffing requirement at 4.1 hours per resident day, with at least .75 hours of RN time to ensure basic safety and care needs are met;
3. Require CMS and the state survey agencies to effectively enforce current staffing standards (which require that each facility have “sufficient” staff to meet each resident’s medical and psycho-social needs), as well as care and dignity standards that relate to insufficient staffing (federal regulations and sub-regulatory guidance already have these requirements, but they are not well enforced);
4. Promulgate laws to address widening gaps in corporate accountability and transparency, resulting from the growing corporatization and sophistication of the industry. Specifically, LTCCC recommends that both of the following be implemented:
  - CMS and the state agencies should be required to track, monitor, and hold accountable corporate webs that the industry increasingly relies on to hide assets and drain resources; and
  - Nursing homes should be required to post a surety bond in each state in which they operate to assure accountability for both quality care and financial integrity. Currently, there is nothing preventing operators from siphoning out funds meant for care staff, resident services, or even necessary medications and then walking away when the operation (predictably) implodes.

### **Ensuring Antipsychotic Drugs are Not Used to Compensate for Inadequate Staffing**

As I noted in my testimony, the inappropriate use of powerful antipsychotic drugs is a widespread problem and a national disgrace. Too often, these drugs are used to sedate residents as a substitute for providing adequate staffing with the appropriate competencies. Most nursing home residents have dementia or some degree of cognitive impairment. Understanding how to provide appropriate care for them should not be a mystery for skilled nursing home providers and their care staff.

Thankfully, we have the knowledge and tools necessary to address this problem. Longstanding federal requirements have prohibited nursing homes from administering antipsychotics for the convenience of staff or for other reasons not clinically indicated to treat a specific, diagnosed condition. Those requirements also provide for informed consent for use of these drugs and the right of residents – or their representatives – to refuse them. Substantial progress would result simply by enforcing existing nursing home standards.

In addition to effective enforcement, we believe that the federal government should implement the following initiatives:

1. Promulgate a law requiring that informed consent be in writing and for a limited time;
2. Codify current regulatory requirements limiting PRN (“as needed”) prescriptions for antipsychotic drugs to 14 days (the Trump Administration has proposed removing this safeguard as part of its “burden reduction” initiative); and
3. Request that the Office of the Inspector General (OIG) for the Department of Health and Human Services conduct a review of antipsychotic drugging in nursing homes to update the country on the status of these problems and progress made since the OIG’s 2011 findings that 83 percent of antipsychotic drug use in nursing homes was off-label and 88 percent of antipsychotic drug use was associated with the condition specified in the

FDA's "black box" warning. [Daniel R. Levinson, Medicare Atypical Antipsychotic Drug Claims for Elderly Nursing Home Residents, HHS OIG (May 2011)].

Thank you for your interest in these issues and your commitment to ensuring quality care for seniors and peace of mind for families. Again, please let me know if I can provide any additional information.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Richard Mollot", written over a horizontal line.

Richard Mollot  
Executive Director